

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

MICHAEL MILLER,
El (sui Juris, Propria persona)

Plaintiff,

v. Civil Action No. 2:22-cv-00133

JACKSON COUNTY SHERIFF DEPARTMENT,

Defendant.

MEMORANDUM OPINION AND ORDER

Pending before the court is a letter and numerous exhibits from plaintiff, received in chambers on March 6, 2023 and ordered filed herewith.

The plaintiff's letter appears directed at objecting to the proposed findings and recommendation ("PF&R") of the Honorable Dwane L. Tinsley, United States Magistrate Judge, recommending dismissal for lack of prosecution. See PF&R, ECF No. 5. The magistrate judge filed his PF&R on January 13, 2023, and the plaintiff's letter carries that same date. Whether or not the letter was indeed drafted on January 13, 2023, as it purports to have been, the postmark reflects that it was not sent until March 2, 2023. Included in the package containing plaintiff's letter was also an unopened envelope from the Clerk appearing to contain this court's memorandum opinion and order

adopting the PF&R and dismissing this case for failure to prosecute (ECF No. 6), as well as the accompanying judgment order (ECF No. 7).

Generously construing the allegations in the letter, the plaintiff appears to object to the magistrate judge's recommendation that the undersigned find he failed to prosecute this action. He points to his purported efforts at conducting discovery and seems to contend he should not be faulted for any failure to prosecute this case in light of a vast alleged conspiracy to hide evidence among, inter alia, the court, Governor of West Virginia, Attorney General of West Virginia, and various other government officials.

To the extent that this letter constitutes objections to the magistrate judge's PF&R, they are untimely. The plaintiff was provided an unambiguous warning that any objections to the PF&R were due on January 30, 2023. See PF&R at 2. Regardless of the date on the letter itself, the postmark on the envelope plainly reflects that it was not mailed until March 2, 2023. The objections are therefore untimely and plaintiff has waived his right to de novo review of the PF&R. See 28 U.S.C. § 636(b)(1); see also United States v. De Leon-Ramirez, 925 F.3d 177, 181 (4th Cir. 2019) (parties typically may not "appeal a magistrate judge's findings that were not

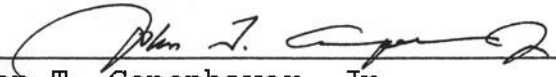
objected to below, as § 636(b) doesn't require de novo review absent objection."); Snyder v. Ridenour, 889 F.2d 1363, 1366 (4th Cir. 1989).

In any event, the plaintiff's objections are also substantively unavailing. The magistrate judge's recommendation of dismissal for failure to prosecute was based upon the plaintiff's failure to file an amended complaint as ordered by prior order of the court. See PF&R at 1. That prior order, entered by the magistrate judge on December 8, 2022, notified the plaintiff that he was unable to proceed with his 42 U.S.C. § 1983 claim as pled because he had failed to name as defendants particular persons responsible for the alleged constitutional violations or, alternatively, failed to identify a policy or custom so as to state a claim against a local government entity under Monell v. N.Y.C. Dep't of Social Servs., 436 U.S. 658 (1978). ECF No. 4 at 2-4. The plaintiff was nevertheless given leave to amend his complaint to state actionable claims against proper defendants and given until January 9, 2023 to do so. Id. at 4-5. He was also notified that failure to amend his complaint would result in a recommendation to the undersigned that this civil action be dismissed for failure to prosecute. Id. at 5. The plaintiff failed to take any such action, and his asserted attempts to seek premature discovery against various non-parties provides no excuse.

Accordingly, it is ORDERED that the plaintiff's letter-form objections be, and hereby are, overruled.

The Clerk is directed to forward copies of this written opinion and order to the plaintiff, all counsel of record, and the United States Magistrate Judge.

Enter: July 27, 2023



John T. Copenhaver, Jr.
Senior United States District Judge